

## **Nagourney Jennifer**

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**From:** Hickey, Catherine T. (DOJ) <Cathreine.Hickey@state.de.us>  
**Sent:** Monday, February 09, 2015 3:45 PM  
**To:** Nagourney Jennifer  
**Subject:** FW: Family Foundations Academy/EastSide Charter School

Jen,  
Please see the below messages from Mr. McDowell regarding the request to PIC for an opinion and the timing of a response. I am forwarding this to you so that it can be included in the formal review record.

Please let me know if you have any questions.

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**From:** McDowell, Charles S. [mailto:cmcdowell@potteranderson.com]  
**Sent:** Monday, February 09, 2015 3:00 PM  
**To:** Hickey, Catherine T. (DOJ)  
**Subject:** Family Foundations Academy/EastSide Charter School

Terri, I spoke to Debbie Moreau at the Public Integrity Commission and she seemed to be ok with what I had described for her. She said she would put the matter on the agenda for the PIC meeting on March 17 which I believe will be after the public comment period closes on this matter leading up to the State Board meeting on March 19.

Charles S. McDowell  
Chairman of the Board  
EastSide Charter School

c/o Potter Anderson & Corroon LLP

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**From:** McDowell, Charles S.  
**Sent:** Thursday, February 05, 2015 7:22 PM  
**To:** [catherine.hickey@state.de.us](mailto:catherine.hickey@state.de.us)  
**Cc:** Deborah J. Moreau Esq ([deborah.moreau@state.de.us](mailto:deborah.moreau@state.de.us))  
**Subject:** Family Foundations Academy/EastSide Charter School

Terri, I should have copied you on the email request below to the PIC. Please let us know if I have left anything out that should have been included.

Charles S. McDowell  
Chairman of the Board  
EastSide Charter School

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**From:** McDowell, Charles S.  
**Sent:** Thursday, February 05, 2015 5:56 PM  
**To:** Deborah J. Moreau Esq ([deborah.moreau@state.de.us](mailto:deborah.moreau@state.de.us))  
**Subject:** Family Foundations Academy/EastSide Charter School

Hello Ms. Moreau, I am Chairman of the Board of EastSide Charter School (EastSide) and also President of the Board of Family Foundations Academy (FFA), both Delaware public charter schools. The two schools have been asked by the Department of Education to seek an opinion from the Public Integrity Commission that the situation described below does not involve a violation of the 29 Del. C. Ch. 58. Could you please call me to discuss? 302 547 8094.

In late December, 2014, the Board leaders at EastSide Charter School were contacted by the Delaware Charter Schools Network and told that, because of organizational and mismanagement issues at FFA that the Department of Education had identified in their charter renewal process, it was highly likely that the School's charter would be revoked unless the two Co-Directors of FFA were terminated and the entire Board of FFA replaced. EastSide was asked if some of its Board members and its school leader, Lamont Browne, would be willing to step in and assist to prevent the School from being closed.

Responding to that request, the four individual officers of the EastSide Board (Charles McDowell, Jocelyn Stewart, Tom Humphrey and Charles Toliver) and Dr. Browne agreed to assist if the FFA Board asked them to. That led to a meeting with the leaders of the FFA Board who issued the invitation. On January 12, the FFA Board terminated the two co-directors, elected the four EastSide directors to the FFA Board and then the President and another Board member resigned. The other two carryover FFA directors are remaining on the Board for a short time to assist in an orderly transition. A new teacher representative was also elected to the Board so now there are 7 members on the FFA Board. The EastSide Charter Board consists of a total of 19 persons.

EastSide has proposed to enter into a Consulting Agreement with FFA pursuant to which FFA will pay a fee to EastSide and EastSide will agree to make available to FFA the services of Dr. Browne (as Executive Director of both schools), Nick Medaglio (as Director of Finance and Operations of both schools), and other EastSide personnel as necessary to ensure the successful operation of FFA. The arrangement will be financially beneficial to both schools. The cost to FFA will be more than offset by the savings realized from the termination of the two Co-Directors, the termination of two outside consulting agreements, and other adjustments of administrative and personnel costs that have already been made. EastSide will also benefit because FFA's fee will absorb a portion of EastSide's personnel costs.

We do not think this situation implicates 29 Del. C. Ch 58. Representatives of DOE suggested concern that state employees might be getting paid by two different state employers for the same time or work. That is not the case here.

Dr. Browne, Mr. Medaglio and all of the other EastSide personnel performing work at FFA will be compensated by EastSide pursuant to their employment agreements with EastSide which have been revised to take into account the extra responsibilities they have and the extra services they are providing now for three school buildings instead of just one. Pursuant to the Consulting Agreement, FFA will pay EastSide an allocable share of EastSide's compensation cost attributable to work the EastSide employees are doing at FFA. Neither Dr. Browne nor any other EastSide employee is receiving any personal financial gain from this arrangement other than pursuant to the terms of their individual employment contracts with EastSide which only fairly compensate them for the work they are doing.

With respect to the corporate approval procedure for the Consulting Agreement, the four new FFA Board members who are also on the Board of EastSide Charter are only 4 of 19 Board members at EastSide. When those 4 individuals are engaged in activities for FFA they will be acting with regard to their fiduciary duty to FFA only. The EastSide Charter Board as a board has no authority over or responsibility for FFA. Similarly, the FFA Board has no authority over or responsibility for EastSide Charter. The members of each Board will operate independently with regard to their individual fiduciary responsibilities to their respective organizations. All members of the FFA Board will be subject to all conflicts laws and principles that apply to any director of any corporation. We have been advised by Delaware corporate law counsel that, in general, a director of any corporation only has a conflict requiring recusal when that director

has a material personal financial interest in the matter at hand. Since EastSide Charter is a nonprofit organization no person would have any personal financial interest in the success or failure of EastSide Charter unless they were an employee of or a contractor with EastSide. None of the EastSide Board members on the FFA Board, nor any of their relatives, are employed by or have contracts with EastSide or FFA.

Nevertheless, in order to minimize the appearance of impropriety in the consideration of the Consulting Agreement by the FFA Board, the three non-EastSide Directors on the FFA Board were designated as a special committee to review the Consulting Agreement and make a recommendation to the full FFA Board. That committee has reviewed the proposed Agreement and has recommended to the Board that it is in the best interest of FFA to approve.

I would appreciate an opportunity to discuss this with you. Thank you for your assistance.

Charles S. McDowell  
Chairman of the Board  
EastSide Charter School

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